IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 7737 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHULABHAI C KOTWAL

Versus

BHIKHABHAI K PRAJAPTI

Appearance:
MR PC MASTER for Petitioners
NOTICE NOT RECD BACK for Respondent No. 1
Mr.P.K. Shukla, ASSTT. GOVERNMENT PLEADER for Respondent No. 7

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 23/06/2000

ORAL JUDGEMENT :

The present petition is filed challenging the judgement and order dated 15.2.1990 passed by the Deputy Secretary (Appeals), Revenue Department, Govt. of Gujarat in SRD/ Con/ Sabar/ 12/89. By the said judgement and order, the Deputy Secretary (Appeals) dismissed the Revision Application filed by respondents nos.1 to 6, but while doing so the Deputy Secretary has also quashed the order passed by the Deputy Collector, Modasa under sec.9(3) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

2. Short facts giving rise to the present petition are that the petitioners are the owners of the land bearing Block No.125 in the sim of village Rahiyol,

Taluka Modasa, District Sabarkantha. It is the case of the petitioners that they are the owners of one half of the land of the said block, which was cultivated by different owners. It is alleged against the petitioners that the petitioners sold their share to respondent no.1 and one Ravabhai Hirabhai, whose heirs are respondents nos.2 to 5 in this petition. According to the Mamlatdar, because of the sale the provisions of sec.31 of the Act were violated and therefore, the proceedings were initiated by the Deputy Collector, Modasa vide Case No.Con/ 43/ 88. After issuing notices to the parties, the Deputy Collector came to the conclusion that the petitioners sold the land to respondents nos.1 to 6. therefore, there is violation of the consolidation scheme and violation of the provisions of sec.31 of the Act. After taking evidence of the parties and looking to the documents, the Deputy Collector came to the conclusion that the said block was not being cultivated jointly, but there is a partition of the land. Respondents nos.1 to 6 are cultivating the said block and therefore, there is violation of the provisions of sec.31 of the Act. Ultimately, the Deputy Collector passed an order that the sale of block no.125 of the petitioners to respondents nos.1 to 6 is illegal as it is in violation of the provisions of sec.31. Therefore, the original owners, i.e. the petitioners shall pay fine of a sum of Rs.200.00 and the sale is declared to be invalid and possession of the land should be handed over to the original owners.

3. Being aggrieved of that respondents nos.1 to 6 filed a Revision Application before the Additional Chief Secretary (Appeals), Revenue Department, Govt. of Gujarat. After notices were issued and the parties served, the matter was heard by the Additional Chief Secretary and he also came to the conclusion that there is a partition in block and therefore, there is violation of the consolidation scheme and the land was not being cultivated jointly. He also came to the conclusion that entry no.537 by which the sale has been recorded is not legal and that cultivation is not done jointly, but there is a partition of the land. He, therefore, dismissed the Revision Application. While dismissing the Revision Application, he confirmed the order of the Deputy Collector passed under the provisions of sec.9(1) and (2) of the Act and quashed the order passed under the provisions of sec.9(3) of the Act.

4. The learned advocate for the petitioner, Shri P.C. Master submitted that the said quashing of the order under sec.9(3) of the Act is because of non

application of mind and that the same has resulted into gross injustice to the petitioners. The learned advocate, Shri Master invited the attention of the Court to the provisions of sec.9(3) of the Act, which read as under :

> "Any person unauthrosiedly occupying or wrongfully in possession of any land, the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector."

When the Deputy Collector had passed an order under sec.9(3) of the Act to the effect that the possession of the land in question should be handed over back to the original owners, there was no reason for the Secretary (Appeals) to quash that particular order. Said order passed by the Deputy Collector was absolutely in consonance with the scheme of the Act and was also in the interest of justice and by quashing the said order the present petitioners are made to suffer injustice.

5. Shri P.C. Master, learned advocate for the petitioners also relied upon the case of this Court in the matter of Brahmbhatt Ambalal Ashabhai & ors. v. Special Secretary, Revenue Deptt. & ors., 1983 (2) GLR 1091. Shri P.C. Master submitted that this Court has held in the said judgement that the word 'may' occurring in sec.9(3) of the Act is required to be read as 'shall' or 'must'. Therefore, the Collector was bound to summarily evict the person who was unauthorisedly occupying or who was wrongfully in possession of any land, the transfer of which by operation of law was void under the provisions of the Act. Shri Master, learned advocate submitted that the aforeaid judgement is based on the previous decision of this Court in the matter of Govindisngh Ramsinghbhai Vaghela v. G. Subbarao, Asstt. Collector, Dholka and others, reported in XI GLR 897, wherein also the Division Bench of this Court has taken a similar view.

6. From the facts of the case and the provisions of the Act it is clear that the Secretary (Appeals) has erred in quashing the order of the Deputy Collector under sec.9(3) of the Act. Looking to the scheme of the Act, under sec.9(1) of the Act, a transfer or partition of any land contrary to the provisions of the Act is to be declared void. Under the provisions of sec.9(2) of the Act, the owner of any land, who transfers or partitions the land in violation of the provisions of the Act is to

be fined by such an amount which does not exceed Rs.250/-, and under the provisions of sec.9(3) of the Act a person who is held to be in unauthorised or wrongful possession of the land is required to be summarily evicted by the Collector. In the present case, the Deputy Collector had passed an order that possession of the land in question be restored to the original owners. The order of the Deputy Collector was in accordance with the provisions of the Act, the same was not required to be interfered with by the Secretary (Appeals).

7. In the result, the petition is allowed. The order of the Secretary (Appeals) is hereby quashed and set aside to the extent it quashed the order of the Deputy Collector passed under sec.9(3) of the Act. The petition stands allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

23rd June 2000 (Ravi R. Tripathi, J.)

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